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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 162, 163, and 178

USCBP-2015-0007

CBP Dec. 16-1

RIN 1515-AD59

United States-Australia Free Trade Agreement

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security;

Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with one change, interim amendments to the U.S. Customs and Border Protection (CBP) regulations that were published in the **Federal Register** on February 10, 2015, as CBP Dec. 15-03, to implement the preferential tariff treatment and other customs-related provisions of the United States-Australia Free Trade Agreement.

DATES: Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Anita Harris, Textile Operations Branch, Office of International Trade, (202) 863-6241.

Other Operational Aspects: Seth Mazze, Trade Policy and Programs, Office of International Trade, (202) 863-6567.

Legal Aspects: Yuliya Gulis, Regulations and Rulings, Office of International Trade, (202) 325-0042.

SUPPLEMENTARY INFORMATION:**Background**

On May 18, 2004, the United States and Australia (the “Parties”) signed the United States-Australia Free Trade Agreement (“AFTA” or “Agreement”). On August 3, 2004, the President signed into law the United States-Australian Free Trade Agreement Implementation Act (the “Act”), Pub. L. 108-286, 118 Stat. 919 (19 U.S.C. 3805 note), which approved and made statutory changes to implement the AFTA. On December 20, 2004, the President signed Proclamation 7857 to implement the AFTA. The Proclamation, which was published in the **Federal Register** on December 23, 2004 (69 FR 77133), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 3722 of the U.S. International Trade Commission.

On February 10, 2015, CBP published CBP Dec. 15-03 in the **Federal Register** (80 FR 7303) setting forth interim amendments to implement the preferential tariff treatment and other customs-related provisions of the AFTA and the Act. The majority of the AFTA implementing regulations set forth in CBP Dec. 15-03 and adopted, with one change, as final in this document have been included within new Subpart L of Part 10 of the CBP regulations (19 CFR Part 10). In those cases in which AFTA implementation is more appropriate in the context of an existing regulatory provision, however, the AFTA regulatory text has been incorporated into an existing part within the CBP regulations. CBP Dec. 15-03 also sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new AFTA implementing regulations. Please refer to that document for further background information.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on February 10, 2015, CBP Dec. 15-03 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. The prescribed public comment closed on April 13, 2015. CBP received one comment on CBP Dec. 15-03.

Discussion of Comments

One response was received to the solicitation of comments on the interim rule set forth in CBP Dec. 15-03. The comment is discussed below.

Comment

One commenter questioned whether the AFTA requires that Australian exporters be consulted before the interim regulations take effect.

CBP Response

The changes proposed in the interim regulations took effect on the date of publication of the interim regulations. As indicated above, CBP Dec. 15-03 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. All interested parties, including Australian exporters, were given the opportunity to submit public comments. No such public comments were received from or submitted by any party in response to CBP Dec. 15-03 that objected to the changes in the interim rules being included in a final rule.

Other Amendment

This document clarifies 19 CFR 10.725(c) by removing the parenthetical cross reference to §§ 10.746 and 10.747 and, instead, stating that the importer's actions must be "pursuant to" those CBP regulations.

Conclusion

After further review of the matter, including consideration of the above-mentioned comment submitted in response to CBP's solicitation of public comment, CBP has determined to adopt as final, with a clarification, the interim rule published in the **Federal Register** (80 FR 7303) on February 10, 2015.

Executive Order 12866

This document is not a regulation subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 15-03 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United States pursuant to section 553(a)(1) of the Administrative Procedure Act (APA). As no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0117, which covers many of the free trade agreement requirements that CBP administers, and 1651-0076, which covers general recordkeeping requirements. The collections of information in these regulations are in §§ 10.723, 10.724, and 10.727 of title 19

of the Code of Federal Regulations (19 CFR 10.723, 10.724, and 10.727). This information is required in connection with general recordkeeping requirements (§ 10.727), as well as claims for preferential tariff treatment under the AFTA and the Act and will be used by CBP to determine eligibility for tariff preference under the AFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated total annual reporting burden associated with the collection of information in this final rule is 4,000 hours. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information, unless it displays a valid OMB control number.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendment to the CBP Regulations

For the reasons stated above, the interim rule amending Parts 10, 24, 162, 163, and 178 of the CBP regulations (19 CFR Parts 10, 24, 162, 163, and 178), which was published at 80 FR 7303 on February 10, 2015, is adopted as a final rule with the following change:

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10, and the specific authority citation for Subpart L, continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Sections 10.721 through 10.748 also issued under 19 U.S.C. 1202 (General Note 28, HTSUS) and Pub. L. 108-286, 118 Stat. 919 (19 U.S.C. 3805 note).

* * * * *

§ 10.725 [Amended]

2. In § 10.725, paragraph (c) is amended by removing the language, “(see §§ 10.746 and 10.747 of this subpart)” and adding in its place the language, “pursuant to §§ 10.746 and 10.747 of this subpart”.

R. Gil Kerlikowske
Commissioner

Approved: January 11, 2016

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

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